

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

BEFORE HON. JUSTICE J. ENOBIE OBANOR
ON THIS 27TH DAY OF JUNE, 2024

PETITION NO.: PET/394/2023

BETWEEN:

VIVIAN UDOKA NJOKU ... PETITIONER

AND

JUDE CHUKWUNONYE NJOKU ... RESPONDENT

JUDGMENT

The Petitioner before this Court filed an Amended Petition on 23rd February, 2024 wherein she sought the reliefs as contained in the Petition as follows;

1. A decree of dissolution of the customary marriage between the Petitioner and the Respondent on the ground that the marriage has broken down irretrievably.
2. An order granting the Petitioner the sole custody of the 4 children of the Marriage.
3. An order restraining the Respondent from harassing, threatening or coming close to the Petitioner or any of her property.
4. An order for the Respondent to pay the Petitioner the sum of Ten Million Naira only (10,000,000.00) being the sum for damages caused to the Petitioner.
5. An order for the Respondent to pay the sum of Two Million naira only on each child of the marriage for their upkeep.

6. And for such Order(s) as this Honourable court may deem necessary in the circumstances.

The Respondent in response opted to file what he termed "Respondent's Reply to the Petition for dissolution of Customary Marriage and Sole Custody of Children" on 20th June, 2024.

The Petitioner on 22nd May, 2024 opened her case and testified for herself as PW1. She adopted her Witness Statement on Oath filed on 23rd February, 2024 and tendered the following documents which were admitted in evidence:

1. Marriage Certificate- Exhibit A
2. Children's School Fees Receipt – Exhibit B1 to B37.
3. Electricity Receipts – Exhibit D1 to D10
4. Feeding and Medical Bills Receipts - Exhibit E1 to E4.

She testified that she got married to the Respondent on 4th November, 2006 at Christopher's Catholic Church, Kwamba, Suleja, Niger State and that the said marriage has broken down irretrievably as she and the Respondent have lived apart for a continuous period of more than two (2) years preceding the presentation of the petition, the Respondent has abandoned her and the Respondent has behaved in a way she cannot be reasonably expected to live with him, citing incidents of domestic abuse and cruelty perpetrated against her by the Respondent. In conclusion, she also testified that the marriage produced four (4) children.

She was subsequently cross-examined on 24th June, 2024 by the Respondent's Counsel.

On the same day the Petitioner was cross-examined, the Respondent opened his defence and testified as RW 1. He testified that he never meted out domestic abuse against the Petitioner. He affirmed that it is true that the parties have not lived together for close to 6 years and that since the Petitioner moved out of the house, the Petitioner has not allowed him to see his children. He also testified that the Petitioner's assertions were false and that he sponsored the Petitioner's undergraduate studies at the University of Abuja, Gwagwalada. The Petitioner's Counsel thereafter cross-examined him and the Respondent closed his case.

At the close of the plenary hearing, the parties opted to address the Court orally, hence, the case was adjourned for judgment.

After reviewing the pleadings, evidence and arguments presented by both parties, the pivotal question that arises is *whether the Petitioner has sufficiently presented evidence to warrant the grant of the dissolution of the marriage as requested in the petition, along with the other reliefs sought.*

Before I delve into the determination of the issue raised above, I would address the misconception of the Petitioner that the Marriage between the parties contracted at St. Christopher's Catholic Church Kwamba, Suleja, Niger State is a Customary Marriage. This Court does not dissolve marriages contracted under customary law. It is crucial to state that Section 21 of the Marriage Act provides that:

Marriage in licensed place of Marriage may be celebrated in any licensed place of worship by any recognised minister of the church, denomination or body to which such place of worship belongs, and according to the rites or usages of marriage observed in such church, denomination or body: Proviso as to times and witnesses

Provided that the marriage be celebrated with open doors between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, and in the presence of two or more witnesses besides the officiating minister.

This provision invariably implies that a marriage conducted in a Catholic Church is recognized under the Act. See *MOTOH v. MOTOH* (2010) LPELR-8643(CA).

The Petitioner even tendered a Marriage Certificate in compliance with the Marriage Act which the Respondent has not contended. I therefore do not comprehend the Petitioner's reference of the marriage as a customary marriage despite having filed the petition in a High Court and not a Customary Court.

Having addressed the misconception, I shall now proceed to determine the issue raised.

The law states that the Court, upon hearing a petition for the dissolution of a marriage, shall deem the marriage to have irretrievably broken down if, and only if, the Petitioner provides sufficient evidence to satisfy the Court of one or more of the specified facts in Section 15(2) of the Matrimonial Causes Act. Thus, in *OGUNJOBI v.*

OGUNJOBI(2021) LPELR-52894(CA) Per FOLASADE AYODEJI OJO, JCA (Pp 20 - 21 Paras B - F) held that:

"...The law is settled that the only ground upon which a party seeking for dissolution of his marriage may base his petition under the Matrimonial Causes Act is that the marriage has broken down irretrievably. See Section 15 (1) of the Matrimonial Causes Act Cap 220 Laws of the Federation of Nigeria which provides as follows: "A petition under this Act by a party to a marriage for a decree of dissolution of the marriage may be presented to the Court by either party to the marriage upon the ground that the marriage has broken down irretrievably". Section 15 (2) of the Act (supra) provides for situations when the Court shall hold the marriage to have broken down irretrievably. They are:

- a) that the respondent has willfully and persistently refused to consummate the marriage;*
- b) that since the marriage the respondent had committed adultery and the petitioner finds it intolerable to live with the respondent;*
- c) that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;*
- d) that the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition;*

e) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted;

f) that the parties to the marriage have lived apart for a continuous period of at least 3 years immediately preceding the presentation of the petition;

g) that the other party to the marriage has, for a period of not less than one year, failed to comply with a decree of restitution of conjugal rights made under the law; and

h) that the other party to the marriage has been absent from the petitioner for such a time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.”

In effect there are eight grounds for divorce and proof of one of these grounds or facts is in the eyes of the law, conclusive proof of irretrievable breakdown of the marriage. See BAKARE v. BAKARE (2016) LPELR-41344(CA).

Furthermore, although the Petitioner in this case is seeking the dissolution of the marriage and the Respondent does not oppose it, the required facts for granting such a request must still be established. If not, the court would decline the request despite the explicit wishes of both parties. See NWANKWO v. NWANKWO (2014) LPELR-24396 CA.

The burden of proof lies with the Petitioner to establish her claims. It was held in ANIOKE v. ANIOKE (2011) LPELR-3774(CA) Per MASSOUD ABDULRAHMAN OREDOLA, JCA (Pp 26 - 27 Paras C - A)

"Basically, in divorce proceedings, the onus of proof with regards to the facts set out in Section 15 (2), (a) - (h) of the Matrimonial Causes Act, lies on the Petitioner. Success or otherwise of the Petition depends largely on how diligently and adequately this burden is discharged. Failure in this regard will entail a dismissal of the Petition, moreso, where one of the parties opposes the dissolution of the marriage. Thus, by virtue of the said provision of the law, a Petitioner at the hearing in a matrimonial causes proceeding, must satisfy the trial Court of the fact or facts alleged or relied upon. Again, by virtue of Section 82 (1) and (2) of the said Act, such matter or fact shall be established to the reasonable satisfaction of the Court. Put differently, the matter or fact as alleged shall be sufficiently proved once the Court is reasonably satisfied of the existence of the ground, fact or matter as alleged. It is noteworthy, that the phrase reasonable satisfaction, has not been defined in the Act. Nevertheless, it connotes adducing all available relevant and adequate evidence in support of the averments before the trial Court and reasonably satisfactorily too."

In this case, the Petitioner stated that due to domestic violence from the Respondent, she moved out of their home with the children in 2018. They have lived apart continuously for two years preceding this petition, establishing a separation period of over five (5) years.

The Respondent did not contest the fact that they have lived apart since 2018. The Petitioner's pleadings and evidence demonstrate that the parties have lived separately from 2018 until the Petition was filed

on May 22, 2023, covering a period of over five (5) years. This is sufficient for this Honourable Court to grant a decree of dissolution of the marriage on this basis alone.

Therefore, I believe that any attempts by the Petitioner or Respondent to place the blame for the separation on each other are, with all due respect, irrelevant to the determination of this Petition. This Court similarly holds that such extensive efforts to assign blame for the separation are equally irrelevant.

This Court finds that the parties to the marriage have lived apart for a continuous period of at least 2 years immediately preceding the presentation of the Petition and as such holds that the marriage between the Petitioner and the Respondent has broken down irretrievably to necessitate the grant a decree of dissolution of the marriage between the Petitioner and the Respondent contracted and celebrated at the St. Christopher's Catholic Church, Kwamba, Suleja, Niger State on 4th November, 2006.

When addressing matters concerning the children of a marriage, the trial Court exercises its discretion both judicially and judiciously. In doing so, the Court is guided by Section 71(1) of the Matrimonial Causes Act Cap M7 LFN 2004, which provides:

"In proceedings with respect to the custody, guardianship, welfare, advancement, or education of children of a marriage, the Court shall regard the interests of those children as the paramount consideration, and subject thereto, the Court may make such order in respect of those matters as it thinks proper."

Additionally, Section 1 of the Child Rights Act 2003 provides:

"In every action concerning a child, whether undertaken by an individual, public or private body, institution, service, Court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration."

The Petitioner has prayed for custody to be granted to her while the Respondent has asked for joint custody of the children with visitation rights. It is not in doubt that the Petitioner has been in custody of the children since 2018 and the Respondent himself admitted that he has not seen the children for close to 6 years. In considering the custody of children of the marriage, the Court considers certain factors including the degree of familiarity with each parent and the children's current living arrangement. See SAMUEL v. SAMUEL (2019) LPELR-48471(CA).

It was held in the case of ATOMATOFA v. ATOMATOFA (2023) LPELR-60523(CA) Per ABIMBOLA OSARUGUE OBASEKI-ADEJUMO, JCA (Pp 19 - 19 Paras A - F)

"It is the position of the law that in determining the issue of custody in matrimonial proceedings, the welfare of the children is of paramount importance. It is also entirely at the discretion of the judge who will exercise same judiciously and judicially, based on the peculiar facts of the case and the application of the relevant law. In exercising its discretion on the grant of custody, the Court is to consider the health of the children, the social and financial status of the parties, religious/social opportunities, sex and age of the children, degree of

familiarity between the child and parent, amount of affection between the child and parent, arrangement for education of the child, possibility of re-marriage by the parent to a third party." See ERHIAGANOMA v. ERHIAGANOMA (2022) LPELR-57767(CA) Per BOLA, JCA."

There is no evidence to indicate that the children are uncomfortable with their current situation. Therefore, the Court finds no reason to disrupt or alter the children's current living arrangement as the preservation of a stable environment for the children is necessary especially if the current arrangement is suitable for the children.

When it comes to custody between either of the parents, in OLOWOFOYEKU v. OLOWOFOYEKU (2011) 1 NWLR (pt. 1227) 177 page 203 per Aboki JCA held thus;

"Custody of a child should not be granted as a punitive measure to a party because of his or her conduct which might have contributed to the breakdown of the marriage.

Custody is never awarded as a reward for good conduct nor is it ever denied as punishment for the guilty party's matrimonial offences. See: Alabi v. Alabi (2007) 9 NWLR (Pt. 1039) page 297; Nanna v Nanna (2006) 3 NWLR (Pt. 966) page 1; Damulak v Damulak (2004) 8 NWLR (Pt. 874) page 151; Odogwu v. Odogwu (1992) 2 NWLR (Pt. 225) page 539; Williams v Williams (1987) 2 NWLR (Pt. 54) page 66; Afonja v Afonja (1971) 1 U.I.L.R. 105.

In considering the welfare of the children of a broken marriage, efforts must be made to ensure that such children are not denied

the love, care and affection of either parent. Where one of the parents deliberately placed obstacle towards the attainment of such parental love and affection, he will be in violation of the right of the child."

Therefore, the parties need to realize that when it comes to the issue of custody, it is not granted as a reward for the good conduct of one party or as punitive measures on a deserving party.

I so hold.

On the issue of damages, it is trite that the award of damages is at the discretion of the Court and it must be exercised judicially and judiciously. The Petitioner in this case averred that she suffered abuse at the hands of the Respondent and as such is entitled to damages. The Petitioner made reference to the fact that she reported to the Police when the Respondent inflicted grievous bodily harm on her, which had her hospitalized. However, the Petitioner failed to provide evidence of the Police Report, the undertaking allegedly signed by the Respondent at the Police Station, the medical report or even pictures of the injuries she obtained.

This Court as a result cannot grant damages in the absence of cogent and credible evidence to establish physical abuse.

In making an order for maintenance this court must put into perspective the income of the Respondent to do justice. In order to determine the level of income of the Respondent and to determine the amount to be granted by the Court for the maintenance of the children

of the marriage, the Court demanded for the Respondent's Bank Statements of Account.

From the Zenith Bank Statement of Account of the Respondent covering the period of 1st January, 2024 to 26th June, 2024 presented before the Court, this Court discovered that the Respondent does not have a steady source of income. The Court further observed that although the account of the Respondent is very busy, the Respondent receives paltry sums of money which cannot cover the request of the Petitioner. The Respondent has informed the Court that he can only pay the sum of N30,000.00 (Thirty Thousand Naira) as he earns the sum of N50,000.00.

Thus, with respect to the Petition, this Court enters judgment as follows;

1. I hereby Order a Decree Nisi for the dissolution of the marriage between the Petitioner and the Respondent contracted and celebrated at St. Christopher's Catholic Church, Kwamba, Suleja, Niger State on 4th November, 2006 on the ground that the marriage has broken down irretrievably which order nisi will be made Absolute after three months.
2. I hereby make an order granting the Petitioner sole custody of the Four (4) children of the Marriage until they attain 18 years of age when they can decide which parent to live with.
3. I hereby make an order granting the Respondent visitation rights to visit the children at a location to be agreed upon by both parties every other month.

4. The Respondent shall have the children visit him for ten (10) days during the long school vacation. The children shall alternatively spend the Easter and Christmas/New Year holiday between the Petitioner and the Respondent, that is, the children will spend the holiday with the Petitioner and the following year they will spend it with the Respondent and so on. The Respondent cannot take the children outside jurisdiction without the Petitioner's consent.

5. I hereby make an order directing that the Respondent shall be responsible for the payment of the school fees and education of the children until they finish their university education and the Respondent shall be involved in the decision of the choice of school for the children of the marriage along with the Petitioner with adequate consideration been made to factors such as location and provision for logistics.

6. I hereby make an order directing the Respondent to pay to the Petitioner the sum of N30,000.00 (Thirty Thousand Naira) only monthly for the maintenance and upkeep of the children of the marriage.

This is my decision.

HON. JUSTICE J. ENOBIE OBANOR
Judge

Appearance:

For the Petitioner; E.F. Abdul, Esq.

For the Respondent; T.S. Nganga, Esq.